

monkfish limited access permit and fishing under the monkfish Category C or D permit provisions, may not possess or land more than 1,000 lb (450 kg) of pollock for each DAS or part of a DAS fished, up to 10,000 lb (4,500 kg) per trip.

(o) *Regional Administrator authority to implement possession limits*—(1) *Possession restrictions to prevent exceeding common pool sub-ACLs.* If the Regional Administrator projects that the catch of any NE multispecies stock allocated to common pool vessels pursuant to § 648.90(a)(4) will exceed the pertinent sub-ACL, NMFS may implement or adjust, at any time prior to or during the fishing year, in a manner consistent with the Administrative Procedure Act, a per-DAS possession limit and/or a maximum trip limit in order to prevent exceeding the common pool sub-ACL in that fishing year.

(2) *Possession restrictions to facilitate harvest of sub-ACLs allocated to the common pool.* If the Regional Administrator projects that the sub-ACL of any stock allocated to the common pool pursuant to § 648.90(a)(4) will not be caught during the fishing year, the Regional Administrator may remove or adjust, in a manner consistent with the Administrative Procedure Act, a per-DAS possession limit and/or a maximum trip limit in order to facilitate harvest and enable the total catch to approach, but not exceed, the pertinent sub-ACL allocated to the common pool for that fishing year.

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§ 648.87 Sector allocation.

(a) *Procedure for approving/implementing a sector allocation proposal.* (1) Any person may submit a sector allocation proposal for a group of limited access NE multispecies vessels to the Council and request that the sector be implemented through either a biennial adjustment or framework adjustment, as specified in § 648.90(a)(2), as long as it is submitted at least 1 year prior to the date the sector wants to begin oper-

ations in accordance with the conditions and restrictions of this section. The sector allocation proposal must contain an appropriate analysis that assesses the impact of the proposed sector, in compliance with the National Environmental Policy Act.

(2) Upon receipt of a sector allocation proposal, the Council must decide whether to initiate a management action to implement the sector proposal. Should a biennial adjustment or framework adjustment to authorize a sector allocation proposal be initiated, the Council will follow the framework adjustment provisions of § 648.90(a)(2). Any biennial adjustment or framework adjustment developed to implement a sector allocation proposal must be in compliance with the general requirements specified in paragraphs (b) and (c) of this section.

(3) *Eligibility.* Any valid limited access NE multispecies permit, including a Handgear A permit and those permits held in confirmation of permit history pursuant to § 648.4(a)(1)(i)(J) as of May 1, 2008, is eligible to join a NE multispecies sector, provided the permit complies with the restrictions specified in this section. Any valid limited access Category A or B monkfish permit may be eligible to join a NE multispecies sector, as described in this section, pursuant to any measures adopted by a future revision to the Monkfish FMP by both the New England and Mid-Atlantic Fishery Management Councils. Vessels that do not join a sector remain subject to the NE multispecies regulations for common pool vessels.

(4) *Minimum size.* To be authorized to operate as a sector under this section, a sector must be comprised of at least three NE multispecies permits issued to at least three different persons, none of whom have any common ownership interests in the permits, vessels, or businesses associated with the permits issued the other two or more persons in that sector. Having an ownership interest in a permit includes, but is not limited to, persons or entities who are shareholders, officers, or partners in a corporation owning a permit; who are partners (general or limited) to a permit owner; who, in any way, partly own a permit; or who derive any financial benefit, or exercises any control

over, another permit. As long as at least three persons issued a NE multispecies permit meet these requirements, permit owners may have common ownership interests in other permits, vessels, or businesses associated with such permits.

(b) *General requirements applicable to all approved Sectors.* (1) All sectors approved under the provisions of paragraph (a) of this section must submit the documents specified in paragraphs (a)(1), (b)(2), and (b)(3) of this section, and comply with the conditions and restrictions of this paragraph (b)(1).

(i) *TAC allocation—(A) Allocated stocks.* Each sector shall be allocated a TAC in the form of an ACE for each NE multispecies stock, with the exception of Atlantic halibut, SNE/MA winter flounder, ocean pout, windowpane flounder (both the GOM/GB and the SNE/MA stocks), and Atlantic wolffish based upon the cumulative PSCs of vessels/permits participating in each sector during a particular fishing year, as described in paragraph (b)(1)(i)(E) of this section. In the event that a future allocation of SNE/MA winter flounder can be made available pursuant to the biennial adjustment or framework process specified in § 648.90(a)(2), an ACE for this stock will be specified pursuant to paragraph (b)(1)(i)(E)(I) of this section.

(B) *Eastern GB stocks.* Each sector allocated ACE for stocks managed under the terms of the U.S./Canada Resource Sharing Understanding in the Eastern U.S./Canada Area, as specified in § 648.85(a), shall be allocated a specific portion of the ACE for such stocks that can only be harvested from the Eastern U.S./Canada Area, as specified in § 648.85(a)(1). The ACE specified for the Eastern U.S./Canada Area portions of these stocks shall be proportional to the sector's allocation of the overall ACL available to all vessels issued a limited access NE multispecies permit for these stocks pursuant to § 648.90(a)(4). For example, if a sector is allocated 10 percent of the GB cod ACL available to all vessels issued a limited access NE multispecies permit, that sector would also be allocated and may harvest 10 percent of that ACE from the Eastern U.S./Canada Area. In this example, if the overall GB cod ACL

available to all vessels issued a limited access NE multispecies permit is 1,000 mt, of which 100 mt is specified to the Eastern U.S./Canada Area, the Sector would be allocated 100 mt of GB cod, of which no more than 10 mt could be harvested from the Eastern U.S./Canada Area and no more than 90 mt could be harvested from the rest of the GB cod stock area.

(C) *Carry-over.* With the exception of GB yellowtail flounder, a sector may carry over an amount of ACE equal to up to 10 percent of its original ACE allocation for each stock that is unused at the end of one fishing year into the following fishing year. Any unused ACE allocated for Eastern GB stocks pursuant to paragraph (b)(1)(i)(B) of this section will contribute to the 10-percent carry-over allowance for each stock, as specified in this paragraph (b)(1)(i)(C), but will not increase an individual sector's allocation of Eastern GB stocks during the following year. This carry-over ACE remains effective during the subsequent fishing year even if vessels that contributed to the sector allocation during the previous fishing year are no longer participating in the same sector for the subsequent fishing year.

(D) *Maximum ACE allocation.* There is no maximum amount of ACE that can be allocated to a particular sector during each fishing year.

(E) *Potential sector contribution (PSC).* For the purposes of allocating a share of the available ACL for each NE multispecies stock to approved sectors pursuant to § 648.90(a)(4), the landings history of all limited access NE multispecies permits shall be evaluated to determine each permit's share of the overall landings for each NE multispecies stock as specified in paragraphs (b)(1)(i)(E)(I) and (2) of this section. When calculating an individual permit's share of the overall landings for a particular regulated species or ocean pout stock, landed weight shall be converted to live weight to maintain consistency with the way ACLs are calculated pursuant to § 648.90(a)(4) and the way ACEs are allocated to sectors pursuant to this paragraph (b)(1)(i). This calculation shall be performed on July 1 of each year, unless another

date is specified by the Regional Administrator, to redistribute the landings history associated with permits that have been voluntarily relinquished or otherwise canceled among all remaining valid limited access NE multispecies permits as of that date during the following fishing year. The PSC calculated pursuant to this paragraph (b)(1)(i)(E) shall remain with the permit indefinitely, but may be permanently reduced or eliminated due to a permit sanction or other enforcement action.

(1) *Calculation of PSC for all NE multispecies stocks except GB cod.* Unless otherwise specified in paragraph (b)(1)(i)(E)(2) of this section, for each valid limited access NE multispecies permit, including limited access NE multispecies Handgear A permits, landings recorded in the NMFS dealer database of each stock of NE multispecies determined by NMFS to be the landings history associated with that permit while subject to the NE multispecies regulations based on whether the vessel fishing under that permit was issued a limited access NE multispecies permit or subsequently qualified for a limited access NE multispecies permit pursuant to § 648.4(a)(1)(i), including regulated species or ocean pout caught under a NE multispecies DAS when participating in the skate or monkfish fisheries, but excluding, for example, landings by scallop vessels operating under a scallop DAS, shall be summed for fishing years 1996 through 2006. This sum shall then be divided by the total landings of each NE multispecies stock during the same period by all permits eligible to join sectors as of May 1, 2008. The resulting figure shall then be multiplied by a factor of 1/PSC of remaining permits as of June 1 of each year, unless another date is specified by the Regional Administrator, to calculate the PSC for each individual valid limited access NE multispecies permit for each regulated species or ocean pout stock allocated to sectors in the NE multispecies fishery for the following fishing year pursuant to this paragraph (b)(1)(i)(E)(1).

(2) *Calculation of GB cod PSC.* The GB cod PSC shall be calculated as specified in this paragraph (b)(1)(i)(E)(2) and shall remain with the permit indefi-

nately regardless whether the vessel participates in either the GB Cod Hook Gear Sector or the GB Cod Fixed Gear Sector, as defined in § 648.87(d)(1) or (2), joins a new sector, or fishes pursuant to the provisions of the common pool.

(i) *GB cod PSC for permits committed to participate in the GB Cod Hook Gear Sector or GB Cod Fixed Gear Sector.* For each owner of a valid NE multispecies permit, or CPH, that committed to participate in either the GB Cod Hook Gear Sector or the GB Cod Fixed Gear Sector as evidenced by a valid authorized signature executed on or before March 1, 2008, on a preliminary roster for either of these sectors, the PSC for GB cod shall be equal to the sum of dealer landings of GB cod for fishing years 1996 through 2001, divided by the total landings of GB cod by permits eligible to join sectors as of May 1, 2008, during that period. The PSC for all other regulated species or ocean pout stocks specified for these permits shall be calculated pursuant to paragraph (b)(1)(i)(E)(1) of this section. The PSC calculated pursuant to this paragraph (b)(1)(i)(E)(2)(i) shall then be multiplied by a factor of 1/PSC of remaining permits as of June 1 of each year, unless another date is specified by the Regional Administrator, to calculate the GB cod PSC for each permit for the following fishing year.

(ii) *GB cod PSC for all other permits.* For each owner of a valid NE multispecies permit or CPH that has not committed to participate in either the GB Cod Hook Gear Sector or GB Cod Fixed Gear Sector, as specified in paragraph (b)(1)(i)(E)(2)(i) of this section, the GB cod PSC for each such permit or CPH shall be based upon the GB cod PSC available after accounting for the GB cod PSC calculated pursuant to paragraph (b)(1)(i)(E)(2)(i) of this section. To determine the GB cod PSC for each of these permits, the sum of the individual permit's landings of GB cod available in the NMFS dealer database for fishing years 1996 through 2006 shall be divided by the total landings of GB cod during that period by the total landings of GB cod by permits eligible to join sectors as of May 1, 2008, during that period, after subtracting the total landings of GB cod by permits that committed to participate in either the

GB Cod Hook Sector or GB Cod Fixed Gear Sector as of March 1, 2008. This individual share shall then be multiplied by the available GB cod PSC calculated by subtracting the GB cod PSC allocated pursuant to paragraph (b)(1)(i)(E)(2)(i) of this section from one. The PSC calculated pursuant to this paragraph (b)(1)(i)(E)(2)(ii) shall then be multiplied by a factor of 1/PSC of remaining permits as of July 1 of each year, unless another date is specified by the Regional Administrator, to calculate the GB cod PSC for each permit.

(ii) *Areas that can be fished.* Vessels in a sector may only fish in a particular stock area, as specified in paragraphs (b)(1)(ii)(A) through (F) of this section, and § 648.85(b)(6)(v), or the Eastern U.S./Canada Area, as specified in § 648.85(a)(1), if the sector has been allocated, or acquires, pursuant to paragraph (b)(1)(viii) of this section, ACE for all stocks allocated to sectors pursuant to paragraph (b)(1)(i)(A) of this section that are caught in that stock area. A sector must project when its ACE for each stock will be exceeded and must ensure that all vessels in the sector cease fishing operations prior to exceeding it. Once a sector has harvested its ACE for a stock, all vessels in that sector must cease fishing operations in that stock area on a sector trip unless and until it acquires additional ACE from another sector pursuant to paragraph (b)(1)(viii) of this section, or as otherwise specified in an approved operations plan pursuant to paragraph (b)(2)(xiv) of this section. For the purposes of this paragraph (b)(1)(ii), an ACE overage means catch of regulated species or ocean pout by vessels participating in a particular sector that exceeds the ACE allocated to that sector, as of the date received or purchased by the dealer, whichever occurs first, after considering all ACE transfer requests ultimately approved by NMFS during the current fishing year, pursuant to paragraph (b)(1)(viii) of this section, unless otherwise specified pursuant to § 648.90(a)(5).

(iii) *Sector AMs.* At the end of the fishing year, NMFS shall evaluate sector catch using VTR, VMS, IVR, and any other available information to determine whether a sector has exceeded

any of its ACE allocations based upon the cumulative catch by participating permits/vessels, as identified in the final operations plan approved by the Regional Administrator pursuant to paragraph (c) of this section, and each sector's share of any overage of the overall ACL for any stock caused by excessive catch by other sub-components of the fishery pursuant to § 648.90(a)(5), if necessary. Should an ACE allocated to a sector be exceeded in a given fishing year, the sector's ACE shall be reduced by the overage on a pound-for-pound basis during the following fishing year, and the sector, each vessel, vessel operator and/or vessel owner participating in the sector may be charged, as a result of said overages, jointly and severally for civil penalties and permit sanctions pursuant to 15 CFR part 904. If an ACE allocated to a sector is not exceeded in a given fishing year pursuant to this paragraph (b)(1)(iii), the sector's ACE allocation shall not be reduced for the following fishing year as a result of an overage of an ACE by non-compliant sectors or an overage of sub-ACLs allocated to common pool vessels, but may be reduced if the excessive catch of a particular stock by other sub-components of the fishery causes the overall ACL of a particular stock to be exceeded pursuant to § 648.90(a)(5). If declining stock conditions result in a need to reduce fishing mortality, and all sectors and common pool vessels have operated within their ACE or sub-ACL limits, a sector's percentage share shall not be changed, but the amount this share represents may be reduced due to reduced overall ACL for a particular stock. If stock conditions improve, and certain sectors stay within their ACE while other sectors or the common pool exceed their respective ACEs or sub-ACLs, the sectors that stay within their ACEs shall receive a temporary increase in ACE equal to the amount that other sectors or the common pool exceeded their ACE or sub-ACL, divided among such sectors proportional to each sector's share of the ACL available to vessels issued a limited access NE multispecies permit.

(A) *Overage penalty if there is sufficient ACE to cover the overage.* If a sector exceeds an ACE allocated to it during the previous fishing year, but has sufficient ACE to address the overage pursuant to this paragraph (b)(1)(iii) based upon the cumulative PSCs of participating vessels during the fishing year following the overage, no overage penalty shall be applied to any member permit/vessel that leaves that sector to fish under the provisions of the common pool or in another sector in the year following the overage. Any impacts to departing member permits/vessels may be specified and addressed by the sector operations plan and associated sector contract.

(B) *Overage penalty if there is insufficient ACE to cover an overage.* If a sector exceeds an ACE allocated to it during the previous fishing year, but disbands in the year following the overage, or otherwise does not have sufficient ACE to address the overage pursuant to this paragraph (b)(1)(iii) based upon the cumulative PSCs of permits/vessels participating in that sector during the fishing year following the overage, individual permit holders that participated in the sector during the fishing year in which the overage occurred shall be responsible for reducing their DAS/PSC to account for that overage in the subsequent fishing year, as follows:

(1) *PSC reduction.* If a sector disbands following an overage, and the owner of an individual permit joins another sector for the subsequent fishing year, that permit's contribution toward the ACE for the stock for which the overage occurred to the other sector in the subsequent fishing year shall be reduced by an amount equal to the overage divided by the number of permits/vessels participating in the sector during the fishing year in which the overage occurred. For example, if a sector comprised of 10 permits/vessels exceeded its GB cod ACE by 10,000 lb (4,536 kg) during the previous fishing year, but later disbands, each permit/vessel that was in that sector, but then joins another sector during the following fishing year shall have its contribution of GB cod to another sector temporarily reduced by 1,000 lb (453.6 kg) during the subsequent fishing year for the pur-

poses of calculating the available GB cod ACE allocated to another sector during that fishing year.

(2) *DAS reduction.* If a sector disbands following an overage and the owner of an individual permit elects to fish under the provisions of the common pool during the subsequent fishing year, that permit/vessel's NE multispecies Category A DAS allocation for the subsequent fishing year shall be temporarily reduced by an amount proportional to the highest percentage overage by that sector of any of the stocks for which an overage occurred. For example, if a sector exceeded its GB cod ACE by 10 percent and its pollock ACE by 15 percent, each permit would receive a 15-percent reduction in its Category A DAS allocation for the subsequent fishing year if fishing under the provisions of the common pool.

(3) *Fishing prohibition.* If a sector does not disband following an overage, but otherwise does not have sufficient ACE to cover an overage based upon the PSC of participating permits, that sector's ACE for the stock for which the overage occurred shall be temporarily reduced to zero for the following fishing year, and that sector shall be prohibited from fishing on a sector trip in the stock area associated with the stock for which the ACE was exceeded during the following year, unless and until that sector can acquire sufficient ACE from another sector to cover the remaining overage from the previous fishing year. For example, if a sector comprised of 10 permits/vessels was allocated 10 mt of GB cod ACE, but caught 25 mt during the previous fishing year (i.e., it exceeded its GB cod ACE by 15 mt), each permit/vessel that participating in that sector during the following fishing year would have its GB cod PSC temporarily reduced to zero during the subsequent fishing year, and that sector would not be able to fish on a sector trip in the GB cod stock area until it could acquire at least an additional 5 mt of GB cod ACE from another sector (i.e., 15 mt overage—10 mt ACE for the following year = 5 mt overage remaining).

(C) *ACE buffer.* At the beginning of each fishing year, NMFS shall withhold 20 percent of a sector's ACE for each stock for a period of up to 61 days (i.e.,

through June 30), unless otherwise specified by NMFS, to allow time to process any ACE transfers submitted at the end of the fishing year pursuant to paragraph (b)(1)(viii) of this section and to determine whether the ACE allocated to any sector needs to be reduced, or any overage penalties need to be applied to individual permits/vessels in the current fishing year to accommodate an ACE overage by that sector during the previous fishing year, as specified in paragraph (b)(1)(iii) of this section.

(iv) *Sector enforcement*—(A) *Sector compliance and joint/several liability*. Unless exempted through a letter of authorization specified in paragraph (c)(2) of this section, each vessel operator and/or vessel owner fishing under an approved sector must comply with all NE multispecies management measures of this part and other applicable law. Each vessel and vessel operator and/or vessel owner participating in a sector must also comply with all applicable requirements and conditions of the operations plan specified in paragraph (b)(2) of this section and the letter of authorization issued pursuant to paragraph (c)(2) of this section. Pursuant to 15 CFR part 904, each sector, permit/vessel owner, and vessel operator participating in the sector may be charged jointly and severally for violations of the following sector operations plan requirements, which may result in an assessment of civil penalties and permit sanctions: ACE overages, discarding of legal-sized NE multispecies, and misreporting of catch, including both landings and discards. For the purposes of enforcement, a sector is a legal entity that can be subject to NMFS enforcement action for violations of the regulations pertaining to sectors, as specified in this paragraph (b)(1)(iv).

(B) *Commitment to a sector*. A permit/vessel participating in a sector must remain in the sector for the remainder of the fishing year. Such permits/vessels cannot fish under both the sector provisions and the provisions of the common pool during that same fishing year for any reason, including, but not limited to, expulsion from the sector pursuant to enforcement actions or other measures specified in an ap-

proved sector operations plan, vessel replacement, or permit/vessel sale to another owner. For example, if a permit/vessel is sold by a sector participant during the fishing year, the new owner must comply with the sector regulations and the conditions of the sector operations plan, sector contract, or any other binding agreements among participating sector vessels for the remainder of the fishing year. If a permit/vessel has been expelled from a sector, the sector must notify NMFS of such an expulsion immediately. Any permit/vessel, vessel operator, or vessel owner removed from a sector during a specific fishing year consistent with sector rules shall not be eligible to fish in another sector or under the NE multispecies regulations for common pool vessels specified in this part for the remainder of that fishing year. For the purposes of this paragraph, “permit/vessel” refers to the fishing and landings history associated with a particular permit/vessel enrolled in a specific sector at the start of the fishing year that was used to calculate the PSC for that permit/vessel and contribute to the ACE for each stock allocated to that specific sector.

(v) *Sector monitoring*. Each sector shall monitor catch by participating sector vessels to ensure that ACEs are not exceeded during the fishing year, as specified in this paragraph (b)(1)(v). The sector shall summarize trips validated by dealer reports; oversee the use of electronic monitoring equipment and review of associated data; maintain a database of VTR, dealer, observer, and electronic monitoring reports; determine all species landings by stock areas; apply discard estimates to landings; deduct catch from ACEs allocated to sectors; and report sector catch on a weekly basis to NMFS, as required in paragraph (b)(1)(vi) of this section. Unless otherwise specified in this paragraph (b)(1)(v), all catches of stocks allocated to sectors by vessels on a sector trip shall be deducted from the sector’s ACE for each NE multispecies stock regardless of what the fishery the vessel was participating in when the fish was caught. For the purposes of this paragraph (b)(1)(v), any regulated species or ocean pout caught using gear capable of catching NE

multispecies (i.e., gear not listed as exempted gear under this part) would be deducted from a sector's ACE if such catch contributed to the specification of PSC, as described in § 648.87(b)(1)(i)(E), and would not apply to another ACL sub-component pursuant to § 648.90(a)(4). For example, any regulated species or ocean pout landed while fishing for or catching skates or monkfish pursuant to the regulations for those fisheries would be deducted from the sector's ACE for each stock because such regulated species or ocean pout were caught while also operating under a NE multispecies DAS. However, if a sector vessel is issued a limited access General Category Atlantic Sea Scallop permit and fishes for scallops under the provisions specific to that permit, any yellowtail flounder caught by the vessel on such trips would be deducted from the other sub-component of the appropriate stock of yellowtail flounder's ACL specified for the Atlantic Sea Scallop fishery and not from the yellowtail flounder ACE for the sector.

(A) *Discards.* A sector vessel may not discard any legal-sized regulated species or ocean pout allocated to sectors pursuant to paragraph (b)(1)(i) of this section, unless otherwise required pursuant to § 648.86(l). Discards of undersized regulated species or ocean pout by a sector vessel must be reported to NMFS consistent with the reporting requirements specified in paragraph (b)(1)(vi) of this section. Discards shall not be included in the information used to calculate a vessel's PSC, as described in § 648.87(b)(1)(i)(E), but shall be counted against a sector's ACE for each NE multispecies stock allocated to a sector.

(B) *Independent third-party monitoring program.* A sector must comply with any dockside/roving monitoring program specified by NMFS for fishing years 2011 and 2012, pursuant to paragraph (b)(1)(v)(B)(I) of this section, including the dockside/roving monitoring operational standards specified in paragraph (b)(5) of this section, and develop and implement an independent third-party dockside/roving monitoring program by fishing year 2013. A sector must also develop, implement, and pay for, to the extent not funded by NMFS,

an at-sea or electronic monitoring program by fishing year 2012 (May 1, 2012) consistent with paragraph (b)(1)(v)(B)(2) of this section. Both the dockside/roving and at-sea or electronic monitoring program developed by sectors must be approved by NMFS for monitoring landings and utilization of sector ACE, as specified in this paragraph (b)(1)(v)(B). Any service provider providing dockside/roving and at-sea or electronic monitoring services pursuant to this paragraph (b)(1)(v)(B) must meet the service provider standards specified in paragraph (b)(4) of this section, and any dockside/roving and at-sea or electronic monitoring program proposed by sectors must meet the operational standards specified in paragraphs (b)(5) and (b)(6) of this section, respectively, and be approved by NMFS in a manner consistent with the Administrative Procedure Act. None of the costs associated with any dockside/roving monitor monitoring requirements shall be paid by the owner or operator of a vessel subject to these requirements during fishing years 2011 and 2012. Starting in fishing year 2013, sectors shall be responsible for paying the costs associated with dockside/roving monitoring coverage, unless otherwise instructed by NMFS.

(I) *Dockside/roving monitoring program.* Dockside/roving monitors shall monitor landings of regulated species and ocean pout at every offload for which a trip has been selected to be observed by a dockside/roving monitor, whether directly to a federally permitted dealer or to a truck for transfer to a federally permitted dealer, to verify such landings at the time the landings are weighed by a federally permitted dealer and to certify the landing weights are accurate as reported on the dealer report. Unless otherwise specified in this part, the level of coverage for landings is specified in paragraph (b)(1)(v)(B)(3) of this section. To ensure that these levels of coverage are achieved, if a trip has been selected to be observed by a dockside/roving monitor, all offloading events associated with that trip, regardless of how many or the location of offloading events, must be monitored, and a vessel may not offload any of its catch until the dockside/roving monitor arrives. For

example, if a trip is selected to be observed by a dockside/roving monitor, a vessel offloading at more than one dealer or facility must have a dockside/roving monitor present during the offload at each location. All landing events at remote ports that are selected to be observed by a dockside/roving monitor must have a roving monitor present to witness offload activities to the truck, as well as a dockside monitor present at each dealer to certify weigh-out of all landings. Any service provider providing dockside/roving monitoring services pursuant to this paragraph (b)(1)(v)(B)(I) must meet the service provider standards specified in paragraph (b)(4) of this section. The details of the dockside/roving monitoring program used by each sector starting in fishing year 2013 pursuant to paragraph (b)(1)(v)(B) of this section must be specified in the sector's operations plan, and must be consistent with the operational standards specified in paragraph (b)(5) of this section. The Regional Administrator shall review the dockside/roving monitoring program and approve/disapprove it as part of the yearly operations plan in a manner consistent with the Administrative Procedure Act. Common pool vessels operating under the provisions of the either a limited access Northeast multispecies Small Vessel Category permit or Handgear A permit, as specified at §§ 648.82(b)(5) and (6), respectively, or an open access Northeast multispecies Handgear B permit, as specified at § 648.88(a), are exempt from the dockside/roving monitoring requirements specified in this paragraph (b)(1)(v)(B)(I). Except as provided in this paragraph (b)(1)(v)(B)(I), all common pool and sector vessels, along with service providers providing dockside monitoring services, will be subject to the dockside monitoring operational requirements specified at § 648.87(b)(5).

(2) *At-sea/electronic monitoring program.* Beginning in fishing year 2012, in addition to the dockside/roving monitoring requirement specified in paragraph (b)(1)(v)(B)(I) of this section, an at-sea/electronic monitoring program must be implemented to verify area fished as well as catch and discards by species and gear type. A sector may elect to develop an at-sea/electronic

monitoring program before fishing year 2012 and specify the details of such a program in its operations plan. Electronic monitoring may be used in place of actual observers if the technology is deemed sufficient by NMFS for a specific trip type based on gear type and area fished, in a manner consistent with the Administrative Procedure Act. No electronic monitoring technology may be used in place of an at-sea monitor unless approved by NMFS as part of the sector's annual operations plan. If either an at-sea monitor or electronic monitoring is assigned to a particular trip, a vessel may not leave port without the appropriate at-sea monitor or electronic monitoring equipment on board. The at-sea/electronic monitoring program developed and implemented by each sector must be consistent with the operational standards specified in paragraph (b)(6) of this section, with details of the program specified in the sector's annual operations plan. The Regional Administrator shall review the at-sea/electronic monitoring program and approve/disapprove it as part of the annual operations plan in a manner consistent with the Administrative Procedure Act. The level of coverage for landings by sector vessels is specified in paragraph (b)(1)(v)(B)(3) of this section.

(3) *Coverage levels.* Except as specified in paragraph (b)(1)(v)(B)(3)(i), any service provider providing dockside/roving or at-sea or electronic monitoring services required under this paragraph (b)(1)(v)(B)(3) must provide coverage that is fair and equitable, and distributed in a statistically random manner among all trips such that coverage is representative of fishing activities by all vessels within the common pool or each sector, and by all operations of common pool vessels or vessels operating in each sector throughout the fishing year.

(i) *Dockside/roving monitoring.* For fishing years 2011 and 2012, NMFS shall determine the level of coverage for any NMFS-sponsored dockside/roving monitoring program specified pursuant to paragraph (b)(1)(v)(B)(I) of this section based on available funding. If 100-percent coverage of all sector and common pool trips is not possible, NMFS shall

first provide coverage to trips without an observer or at-sea monitor assigned pursuant to § 648.11(k), or approved electronic monitoring equipment assigned pursuant to paragraph (b)(1)(v)(B) of this section for sector vessels. Starting in fishing year 2013, at least 20 percent of all sector and common pool trips shall be monitored by dockside/roving monitors.

(ii) *At-sea/electronic monitoring.* Beginning in fishing year 2012, coverage levels for an at-sea monitoring program shall be specified by NMFS, but shall be less than 100 percent of all sector trips. Such coverage levels must be sufficient to at least meet the coefficient of variation specified in the Standardized Bycatch Reporting Methodology and accurately monitor sector operations. In the event that a NMFS-sponsored observer and a third-party at-sea monitor are assigned to the same trip, only the NMFS observer must observe that trip.

(4) *Hail reports.* For the purposes of the dockside/roving and at-sea monitoring requirements specified in this paragraph (b)(1)(v)(B), sector vessels must submit all hail reports for a sector trip in which the NE multispecies catch applies against the ACE allocated to a sector, as specified in this part, to service providers offering dockside/roving and at-sea monitoring services pursuant to this paragraph (b)(1)(v)(B). The mechanism and timing of the transmission of such hail reports must be consistent with instructions provided by the Regional Administrator for any dockside/roving monitoring program required by paragraph (b)(1)(v)(B)(I) of this section, or specified in the annual sector operations plan, consistent with paragraphs (b)(5) and (6) of this section.

(5) *Notification of service provider change.* If for any reason a sector decides to change approved service providers used to provide dockside/roving or at-sea or electronic monitoring services required in this paragraph (b)(1)(v), the sector manager must first inform NMFS in writing in advance of the effective date of the change in approved service providers in conjunction with the submission of the next weekly sector catch report specified in paragraph (b)(1)(vi)(B) of this section. A

sector may employ more than one service provider at any time, provided any service provider employed by a sector meets the standards specified in paragraph (b)(4) of this section.

(vi) *Sector reporting requirements.* In addition to the other reporting/record-keeping requirements specified in this part, a sector's vessels must comply with the reporting requirements specified in this paragraph (b)(1)(vi).

(A) *VMS declarations and trip-level catch reports.* Prior to each sector trip, a sector vessel must declare into broad stock areas in which the vessel fishes and submit the VTR serial number associated with that trip pursuant to § 648.10(k). The sector vessel must also submit a VMS catch report detailing regulated species and ocean pout catch by broad stock areas when fishing in multiple stock areas on the same trip, pursuant to § 648.10(k).

(B) *Weekly catch report.* Each sector must submit weekly reports to NMFS stating the remaining balance of ACE allocated to each sector based upon regulated species and ocean pout landings and discards of vessels participating in that sector and any compliance/enforcement concerns. These reports must include at least the following information, as instructed by the Regional Administrator: Week ending date; species, stock area, gear, number of trips, reported landings (landed pounds and live pounds), discards (live pounds), total catch (live pounds), status of the sector's ACE (pounds remaining and percent remaining), and whether this is a new or updated record of sector catch for each NE multispecies stock allocated to that particular sector; sector enforcement issues, including any discrepancies noted by dockside/roving monitors between dealers and offloads; summary of offloads witnessed by dockside/roving monitors for that reporting week; and a list of vessels landing for that reporting week. These weekly catch reports must be submitted no later than 0700 hr on the second Monday after the reporting week, as defined in this part. The frequency of these reports must be increased to more than a weekly submission when the balance of remaining ACE is low, as specified in the sector operations

plan and approved by NMFS. If requested, sectors must provide detailed trip-by-trip catch data to NMFS for the purposes of auditing sector catch monitoring data based upon guidance provided by the Regional Administrator.

(C) *Year-end report.* An approved sector must submit an annual year-end report to NMFS and the Council, no later than 60 days after the end of the fishing year, that summarizes the fishing activities of participating permits/vessels, which must include at least the following information: Catch, including landings and discards, of all species by sector vessels; the permit number of each sector vessel that fished for regulated species or ocean pout; the number of vessels that fished for non-regulated species or ocean pout; the method used to estimate discards by sector vessels; the landing port used by sector vessels; enforcement actions; and other relevant information required to evaluate the biological, economic, and social impacts of sectors and their fishing operations consistent with confidentiality requirements of applicable law.

(vii) *Interaction with other fisheries—*

(A) *Use of DAS.* A sector vessel must comply with all measures specified for another fishery pursuant to this part, including any requirement to use a NE multispecies DAS. If the regulations of another fishery require the use of a NE multispecies DAS, the DAS allocation and accrual provisions specified in § 648.82(d) and (e), respectively, apply to each trip by a sector vessel, as applicable. For example, if a sector vessel is also issued a limited access monkfish Category C permit and is required to use a NE multispecies DAS concurrent with a monkfish DAS under this part, any NE multispecies DAS used by the sector vessel accrues, as specified in § 648.82(e)(1)(ii) based upon the vessel's NE multispecies DAS allocation calculated pursuant to § 648.82(d)(1)(iv)(B).

(B) *Availability of ACE.* Notwithstanding the requirements in paragraph (b)(1)(vii)(A) of this section, if a sector has not been allocated or does not acquire sufficient ACE available to cover the catch of a particular stock of NE multispecies while participating in another fishery in which such catch would apply to the ACE allocated to a

sector, vessels participating in that sector cannot participate in those other fisheries unless NMFS has approved a sector operations plan that ensures that regulated species or ocean pout will not be caught while participating in these other fisheries.

(viii) *ACE transfers.* All or a portion of a sector's ACE for any NE multispecies stock may be transferred to another sector at any time during the fishing year and up to 2 weeks into the following fishing year (i.e., through May 14), unless otherwise instructed by NMFS, to cover any overages during the previous fishing year. A sector is not required to transfer ACE to another sector. An ACE transfer only becomes effective upon approval by NMFS, as specified in paragraph (b)(1)(viii)(B) of this section.

(A) *Application to transfer ACE.* ACE may be transferred from one sector to another through written request to the Regional Administrator. This request must include the name of the sectors involved, the amount of each ACE to be transferred, the fishing year in which the ACE transfer applies, and the amount of compensation received for any ACE transferred, as instructed by the Regional Administrator.

(B) *Approval of an ACE transfer request.* NMFS shall approve/disapprove a request to transfer ACE based upon compliance by each sector and its participating vessels with the reporting requirements specified in this part. The Regional Administrator shall inform both sectors in writing whether the ACE transfer request has been approved within 2 weeks of the receipt of the ACE transfer request.

(C) *Duration of transfer.* Notwithstanding ACE carried over into the next fishing year pursuant to paragraph (b)(1)(i)(C) of this section, ACE transferred pursuant to this paragraph (b)(1)(viii) is only valid for the fishing year in which the transfer is approved, with the exception of ACE transfer requests that are submitted up to 2 weeks into the subsequent fishing year to address any potential ACE overages from the previous fishing year, as provided in paragraph (b)(1)(iii) of this section, unless otherwise instructed by NMFS.

(ix) *Trip limits.* With the exception of stocks listed in § 648.86(1) and the Atlantic halibut trip limit at § 648.86(c), a sector vessel is not limited in the amount of allocated NE multispecies stocks that can be harvested on a particular fishing trip, unless otherwise specified in the operations plan.

(2) *Operations plan and sector contract.* To be approved to operate, each sector must submit an operations plan and preliminary sector contract to the Regional Administrator no later than September 1 prior to the fishing year in which the sector intends to begin operations, unless otherwise instructed by NMFS. A final roster, sector contract, and list of Federal and state permits held by participating vessels for each sector must be submitted by December 1 prior to the fishing year in which the sector intends to begin operations, unless otherwise instructed by NMFS. The operations plan may cover a 1- or 2-year period, provided the analysis required in paragraph (b)(3) of this section is sufficient to assess the impacts of sector operations during the 2-year period and that sector membership, or any other parameter that may affect sector operations during the second year of the approved operations plan, does not differ to the point where the impacts analyzed by the supporting NEPA document are compromised. Each vessel and vessel operator and/or vessel owner participating in a sector must agree to and comply with all applicable requirements and conditions of the operations plan specified in this paragraph (b)(2) and the letter of authorization issued pursuant to paragraph (c)(2) of this section. It shall be unlawful to violate any such conditions and requirements unless such conditions or restrictions are identified in an approved operations plan as administrative only. If a proposed sector does not comply with the requirements of this paragraph (b)(2), NMFS may decline to propose for approval such sector operations plans, even if the Council has approved such sector. At least the following elements must be contained in either the final operations plan or sector contract submitted to NMFS:

(i) A list of all parties, vessels, and vessel owners who will participate in the sector;

(ii) A list of all Federal and state permits held by persons participating in the sector, including an indication for each permit whether it is enrolled and will actively fish in a sector, or will be subject to the provisions of the common pool;

(iii) A contract signed by all sector participants indicating their agreement to abide by the operations plan;

(iv) The name of a designated representative or agent of the sector for service of process;

(v) If applicable, a plan for consolidation or redistribution of ACE detailing the quantity and duration of such consolidation or redistribution within the sector;

(vi) A list of the specific management rules the sector participants will agree to abide by in order to avoid exceeding the allocated ACE for each stock, including a plan of operations or cessation of operations once the ACEs of one or more stocks are harvested and detailed plans for enforcement of the sector rules;

(vii) A plan that defines the procedures by which members of the sector that do not abide by the rules of the sector will be disciplined or removed from the sector, and a procedure for notifying NMFS of such expulsions from the sector;

(viii) If applicable, a plan of how the ACE allocated to the sector is assigned to each vessel;

(ix) If the operations plan is inconsistent with, or outside the scope of the NEPA analysis associated with the sector proposal/framework adjustment as specified in paragraph (a)(1) of this section, a supplemental NEPA analysis may be required with the operations plan;

(x) Detailed information about overage penalties or other actions that will be taken if a sector exceeds its ACE for any stock;

(xi) Detailed plans for the monitoring and reporting of landings and discards by sector participants, including, but not limited to, detailed information describing the sector's dockside/roving and at-sea/electronic monitoring program for monitoring utilization of ACE

allocated to that sector; identification of the independent third-party service providers employed by the sector to provide dockside/roving and at-sea/electronic monitoring services; the mechanism and timing of any hail reports necessary to coordinate the deployment of dockside/roving and at-sea monitors and electronic monitoring equipment; a list of specific ports where participating vessels will land fish, with specific exemptions noted for safety, weather, etc., allowed, provided the sector provides reasonable notification to NMFS concerning a deviation from the listed ports; and any other information about such a program required by NMFS;

(xii) ACE thresholds that may trigger revisions to sector operations to ensure allocated ACE is not exceeded, and details regarding the sector's plans for notifying NMFS once the specified ACE threshold has been reached;

(xiii) Identification of any potential redirection of effort into other fisheries expected as a result of sector operations, and, if necessary, proposed limitations to eliminate any adverse effects expected from such redirection of effort;

(xiv) If applicable, description of how regulated species and ocean pout will be avoided while participating in other fisheries that have a bycatch of regulated species or ocean pout if the sector does not have sufficient ACE for stocks of regulated species or ocean pout caught as bycatch in those fisheries, as specified in paragraph (b)(1)(vii)(B) of this section; and

(xv) A list of existing regulations that the sector is requesting exemption from during the following fishing year pursuant to paragraph (c)(2) of this section.

(3) *NEPA analysis.* In addition to the documents required by paragraphs (a)(1) and (b)(2) of this section, before NMFS can approve a sector to operate during a particular fishing year, each sector must develop and submit to NMFS, in conjunction with the yearly operations plan and sector contract, an appropriate NEPA analysis assessing the impacts of forming the sector and operating under the measures described in the sector operations plan.

(4) *Independent third-party monitoring provider standards.* Any service provider intending to provide dockside/roving and at-sea/electronic monitoring services described in § 648.82(n)(2) and paragraph (b)(1)(v) of this section must apply to and be approved/certified by NMFS in a manner consistent with the Administrative Procedure Act. NMFS shall approve/certify service providers and associated dockside, roving, and/or at-sea monitors as eligible to provide sector monitoring services specified in this part and can disapprove/decertify service providers and/or individual monitors through notice in writing to individual service providers/monitors if the following criteria are no longer being met:

(i) *Service provider information.* As part of the application for service provider approval/certification, potential service providers must include at least the following information:

(A) Identification of corporate structure, including the names and duties of controlling interests in the company such as owners, board members, authorized agents, and staff; and articles of incorporation, or a partnership agreement, as appropriate;

(B) Contact information for official correspondence and communication with any other office;

(C) A statement, signed under penalty of perjury, from each owner, board member, and officer that they are free from a conflict of interest with fishing-related parties including, but not limited to, vessels, dealers, shipping companies, sectors, sector managers, advocacy groups, or research institutions and will not accept, directly or indirectly, any gratuity, gift, favor, entertainment, loan, or anything of monetary value from such parties;

(D) A statement, signed under penalty of perjury, from each owner, board member, and officer describing any criminal convictions, Federal contracts they have had, and the performance rating they received on the contract, and previous decertification action while working as an observer or observer service provider;

(E) A description of any prior experience the applicant may have in placing individuals in remote field and/or marine work environments including, but

not limited to, recruiting, hiring, deployment, and personnel administration;

(F) A description of the applicant's ability to carry out the responsibilities and duties of a sector monitoring/reporting service provider and the arrangements to be used, including whether the service provider is able to offer dockside and/or at-sea monitoring services;

(G) Evidence of adequate insurance (copies of which shall be provided to the vessel owner, operator, or vessel manager, when requested) to cover injury, liability, and accidental death to cover dockside, roving, and at-sea monitors (including during training); vessel owner; and service provider;

(H) Proof of benefits and personnel services provided in accordance with the terms of each monitor's contract or employment status;

(I) Proof that the service provider's dockside, roving, and at-sea monitors have passed an adequate training course sponsored by the service providers to the extent not funded by NMFS that is consistent with the curriculum used in the current yearly NEFOP training course, unless otherwise specified by NMFS;

(J) An Emergency Action Plan describing the provider's response to an emergency with a dockside, roving, and at-sea monitors, including, but not limited to, personal injury, death, harassment, or intimidation; and

(K) Evidence that the company is in good financial standing;

(ii) *Service provider performance requirements.* Dockside/roving and at-sea monitoring service providers must be able to document compliance with the following criteria and requirements:

(A) A service provide must establish and carry out a comprehensive plan to deploy NMFS-certified dockside, roving, and/or at-sea monitors, or other at-sea monitoring mechanism, such as electronic monitoring equipment that is approved by NMFS, according to a prescribed coverage level (or level of precision for catch estimation), as specified by NMFS, including all of the necessary vessel reporting/notice requirements to facilitate such deployment, as follows:

(1) A service provider must be available to industry 24 hr per day, 7 days per week, with the telephone system monitored a minimum of four times daily to ensure rapid response to industry requests;

(2) A service provider must be able to deploy dockside, roving, and/or at-sea monitors, or other approved at-sea monitoring mechanism to all ports in which service is required by sectors, or a subset of ports as part of a contract with a particular sector;

(3) A service provider must report dockside, roving, and at-sea monitors and other approved at-sea monitoring mechanism deployments to NMFS and the sector manager in a timely manner to determine whether the predetermined coverage levels are being achieved for the appropriate sector;

(4) A service provider must assign dockside, roving, and at-sea monitors and other approved at-sea monitoring mechanisms without regard to any preference by the sector manager or representatives of vessels other than when the service is needed and the availability of approved/certified monitors and other at-sea monitoring mechanisms;

(5) A service provider's dockside, roving, and at-sea monitor assignment must be fair, equitable, representative of fishing activities within each sector, and able to monitor fishing activity throughout the fishing year;

(6) For service providers offering catch estimation or at-sea monitoring services, a service provider must be able to determine an estimate of discards for each trip and provide such information to the sector manager and NMFS, as appropriate and as required by this section;

(B) The service provider must ensure that dockside, roving, and at-sea monitors remain available to NMFS, including NMFS Office for Law Enforcement, for debriefing for at least 2 weeks following any monitored trip/off-load;

(C) The service provider must report possible dockside, roving, and at-sea monitor harassment; discrimination; concerns about vessel safety or marine casualty; injury; and any information, allegations, or reports regarding dockside, roving, or at-sea monitor conflict

of interest or breach of the standards of behavior to NMFS and/or the sector manager, as specified by NMFS;

(D) The service provider must submit to NMFS, if requested, a copy of each signed and valid contract (including all attachments, appendices, addendums, and exhibits incorporated into the contract) between the service provider and those entities requiring services (i.e., sectors and participating vessels) and between the service provider and specific dockside, roving, or at-sea monitors;

(E) The service provider must submit to NMFS, if requested, copies of any information developed and used by the service providers distributed to vessels, such as informational pamphlets, payment notification, description of duties, etc.;

(F) A service provider may refuse to deploy a dockside, roving, or at-sea monitor or other approved at-sea monitoring mechanism on a requesting fishing vessel for any reason including, but not limited to, the following:

(1) If the service provider does not have an available dockside/roving monitor prior to a vessel's intended date/time of landing, or if the service provider does not have an available at-sea monitor or other at-sea monitoring mechanism approved by NMFS within the advanced notice requirements established by the service provider;

(2) If the service provider is not given adequate notice of vessel departure or landing from the sector manager or participating vessels, as specified by the service provider;

(3) For the purposes of at-sea monitoring, if the service provider has determined that the requesting vessel is inadequate or unsafe pursuant to the reasons described in § 600.746; and

(4) Failure to pay for previous deployments of dockside, roving, or at-sea monitors, or other approved at-sea monitoring mechanism.

(G) With the exception of a service provider offering reporting, dockside, and/or at-sea monitoring services to participants of another fishery managed under Federal regulations, a service provider must not have a direct or indirect interest in a fishery managed under Federal regulations, including, but not limited to, fishing vessels,

dealers, shipping companies, sectors, sector managers, advocacy groups, or research institutions and may not solicit or accept, directly or indirectly, any gratuity, gift, favor, entertainment, loan, or anything of monetary value from anyone who conducts fishing or fishing-related activities that are regulated by NMFS, or who has interests that may be substantially affected by the performance or non-performance of the official duties of service providers;

(H) A system to record, retain, and distribute the following information to NMFS, as requested, for a period specified by NMFS, including:

(1) Dockside, roving, and/or at-sea monitor and other approved monitoring equipment deployment levels, including the number of refusals and reasons for such refusals;

(2) Incident/non-compliance reports (e.g., failure to offload catch); and

(3) Hail reports, landings records, and other associated interactions with vessels and dealers.

(I) A means to protect the confidentiality and privacy of data submitted by vessels, as required by the Magnuson-Stevens Act; and

(J) A service provider must be able to supply dockside and at-sea monitors with sufficient safety and data-gathering equipment, as specified by NMFS.

(iii) *Standards for individual dockside/roving monitors.* For an individual to be approved/certified as a dockside or roving monitor, the service provider must demonstrate that each potential monitor meets the following criteria:

(A) A high school diploma or legal equivalent;

(B) Successful completion of all NMFS-required training and briefings before deployment;

(C) Physical and mental capacity for carrying out the responsibilities of a dockside/roving monitor pursuant to standards established by NMFS, such as being certified by a physician to be physically fit to work as a dockside/roving monitor after consideration that a monitor may be required to climb a ladder to inspect fish holds and/or trucks;

(D) Absence of fisheries-related convictions based upon a thorough background check; and

(E) Independence from fishing-related parties including, but not limited to, vessels, dealers, shipping companies, sectors, sector managers, advocacy groups, or research institutions to prevent conflicts of interest.

(iv) *Standards for individual at-sea monitors.* For an individual to be approved/certified as an at-sea monitor, the service provider must demonstrate that each potential monitor meets the following criteria:

(A) A high school diploma or legal equivalent;

(B) Successful completion of all NMFS-required training and briefings before deployment;

(C) Physical and mental capacity for carrying out the responsibilities of an at-sea monitor on board fishing vessels, pursuant to standards established by NMFS such as being certified by a physician to be physically fit to work as an at-sea monitor after consideration of at least the following work-related issues:

(1) Susceptibility to chronic motion sickness;

(2) Ability to live in confined quarters;

(3) Ability to tolerate stress;

(4) Ability to lift and carry heavy objects up to 50 lb (22.7 kg);

(5) Ability to drag heavy objects up to 200 lb (90.7 kg); and

(6) Ability to climb a ladder.

(D) A current Red Cross (or equivalent) CPR/first aid certification;

(E) Absence of fisheries-related convictions, based upon a thorough background check; and

(F) Independence from fishing-related parties including, but not limited to, vessels, dealers, shipping companies, sectors, sector managers, advocacy groups, or research institutions to prevent conflicts of interest.

(5) *Dockside monitoring operational standards.* In addition to the independent third-party monitoring provider standards specified in paragraph (b)(4) of this section, any dockside monitoring program developed by NMFS pursuant to paragraph (b)(1)(v)(B)(I) of this section must meet

the following operational standards to be approved by NMFS:

(i) *Vessel requirements—(A) Reporting/recordkeeping requirements.* In addition to all other reporting/recordkeeping requirements specified in this part, to facilitate the deployment of independent dockside and roving monitors pursuant to § 648.82(n)(2)(iv) and paragraph (b)(1)(v) of this section, the operator of a vessel fishing under the provisions of the common pool or on a sector trip must comply with the following requirements:

(1) *Trip-start hail report.* The vessel operator must submit a trip-start hail report prior to departing port at the beginning of each trip notifying the sector manager and/or dockside/roving monitor service provider of the vessel permit number; trip ID number in the form of the VTR serial number of the first VTR page for that trip, or another trip identifier specified by NMFS; and an estimate of the date and time of arrival to port. Trip-start hail reports by vessels operating less than 6 hr or within 6 hr of port must also include estimated date and time of offload. If the vessel operator does not receive confirmation of the receipt of the trip-start hail report from the dockside/roving monitor provider, the operator must contact the service provider to confirm the trip-start hail report via an independent back-up system developed by the service provider.

(2) *Trip-end hail report.* Prior to returning to port upon the completion of a fishing trip, the vessel operator must submit a trip-end hail report notifying the dockside/roving monitor service provider of the vessel permit number; trip ID submitted pursuant to paragraph (b)(5)(i)(A)(I) of this section; intended offloading location(s), including the dock/dealer, port/harbor, and state for the first dealer/facility where the vessel intends to offload catch and the port/harbor, and state for the second dealer/facility where the vessel intends to offload catch; estimated date/time of arrival; estimated date/time of offload; estimated total amount of regulated species on board (in pounds, landed weight); and estimated total amount of all other species retained (in pounds, landed weight), including species managed by other FMPs, on board. The

trip-end hail report must be submitted at least 6 hr in advance of landing for all trips at least 6 hr in duration or occurring more than 6 hr from port. For shorter trips, the trip-end hail reports must be submitted within sufficient time to allow the deployment of the dockside/roving monitor to the offloading site, as specified by the dockside/roving monitoring service provider in consultation with NMFS Office of Law Enforcement. These reports may be in the form of an email to the dockside/roving monitor service provider or another means of communication specified by the service provider.

(B) *Copies of trip documents.* The operator of a sector vessel that is issued a waiver from the dockside/roving monitoring requirements specified in paragraph (b)(1)(v)(B) of this section for a particular trip must provide copies of all VTRs and dealer receipts associated with that trip to the sector or designated third party contractor, as appropriate, within 24 hr of offloading.

(C) *Vessel offloads.* A vessel may not offload any fish from a trip that was selected to be observed by a dockside/roving monitor until the dockside/roving monitor(s) assigned to that trip is present, as specified in paragraph (b)(5)(ii)(A) of this section.

(ii) *Dockside/roving monitor service provider requirements—(A) Confirmation of vessel hail reports.* Upon receipt of a trip-start or trip-end hail reports pursuant to paragraphs (b)(5)(i)(A)(1) and (2) of this section, the service provider shall immediately send confirmation that the trip-start or trip-end hail report was received to the vessel. A service provider must establish an independent back-up system to the primary hail report system (e.g., a phone number if the primary hail report system is based upon email) to ensure receipt of such trip-start or trip-end hail reports. In confirming the receipt of a trip-end hail report, the service provider will inform the vessel operator that the offload(s) associated with that trip will be monitored by a dockside/roving monitor or that the vessel is issued a dockside/roving monitor waiver for that trip. If a dockside/roving monitor is assigned to observe a trip's offloads, but cannot meet the vessel as scheduled, the service provider must inform the

vessel, the sector, and NMFS Office of Law Enforcement, as appropriate, as soon as possible, to specify the time when the dockside/roving monitor will arrive, or issue the vessel a waiver for that particular trip. The service provider or sector manager must also provide NMFS Office of Law Enforcement with the information contained in the trip-start and trip-end hail reports, including whether the vessel has been assigned a dockside/roving monitor for that trip, at the same time that the confirmation is sent to the vessel.

(B) *Documentation of offloads—(1) Offloads directly to a dealer.* Upon the completion of the offload, the dockside/roving monitor shall retain a copy of all VTRs associated with the trip, including all information submitted (i.e., no blocked cells) provided by the sector vessel; record whether the dealer scales were certified by an appropriate state agency; observe and record whether ice and box weights are tared by the dealer before catch is added, or record the estimated weight of ice and the box from the dealer; record the weight of catch offloaded by species (and market category, if culled); determine and record whether all fish have been offloaded, including an estimate of the weight of fish being retained by captain and crew for personal consumption or other use and the reason for retention of such catch; sign the dealer receipt associated with the offload for each trip (i.e., dealer/weighout slip or other form of documentation of the amount of catch offloaded by the dealer), or have the dealer sign the dockside/roving monitor report, as appropriate; provide data summarizing the offloads of each trip, including copies of the VTR(s), dockside/roving monitor report, and dealer receipt(s), if separate from the dockside/roving monitor report, to the sector manager or designated third party contractor, as appropriate, within 24 hr of offloading; and retain a copy of such information to document that the offload was monitored, as instructed by the Regional Administrator.

(2) *Offloads to a truck.* A roving monitor observing offloads into a truck shall retain copies of all VTRs filled out for that trip with all information

submitted (*i.e.*, no blocked cells) provided by the sector vessel; if there are no scales at the offload site, record the number of totes of each species and the captain's estimate of the weight in each tote; if there are scales at the offload site, record whether the scales were certified by an appropriate state agency and observe and record whether ice and box weights are tared before catch is added, or record the estimated weight of ice and the box; determine and record whether all fish have been offloaded, including an estimate of the weight of fish being retained by captain and crew for personal consumption or other use and the reason for retention of such catch; record all offloaded catch by species in a report, unless the driver creates such a report that the roving monitor may use which shall be signed by the roving monitor; document that each tote is labeled with the appropriate identifying information including, but not limited to, the serial number of the first VTR page filled out for that trip or another trip ID specified by NMFS, the roving monitor's name, tote number, and species; provide data summarizing the offloads of each trip, including copies of the VTR(s) and roving monitor report to the sector manager or designated third party contractor, as appropriate, within 24 hr of offloading; and retain a copy of such information to document that the offload was monitored, as instructed by the Regional Administrator. The roving monitor must submit copies of the VTR(s); driver manifest(s), if separate from the roving monitor's report; and the roving monitor's report to the sector manager or third-party service provider, as appropriate. The tote tagging requirements specified in this paragraph (b)(5)(ii)(B)(2), are not required, provided the following three requirements are met: The roving monitor that observed the offload at the dock will also be the dockside monitor at the truck offload to the dealer; the roving monitor will follow the truck, in line of sight, from the remote offload to the dealer offload where the weighing occurs; and, the truck is loaded with only the catch from the one trip being monitored.

(C) *Record retention.* The dockside/roving monitor service provider shall retain an electronic record of each offload observed and make electronic and other records that document an offload available to NMFS upon request.

(D) *Safe-harbor provision.* The dockside/roving monitor service provider must work with the sector and NMFS Office of Law Enforcement to establish an acceptable process for safe-harbor situations where a vessel is unable to follow normal dockside/roving monitor protocols outlined in paragraph (b)(5) of this section due to an emergency situation.

(E) *Inspection of fish holds and other areas of a vessel.* Except to the extent authorized by a sector to inspect fish holds and other areas of such sector's members' vessels in which fish are stored, dockside/roving monitors assigned to observe the offloading of fish shall not inspect fish holds or any other areas of a vessel in which fish are stored unless first required by the Regional Administrator. Prior to any such requirement becoming effective, the Regional Administrator shall notify affected permit holders and monitoring providers by letter or other appropriate means, and shall provide instructions and guidelines deemed necessary to carry out such inspections.

(iii) *Adjustment to operational standards.* The dockside/roving monitor operational standards specified in paragraph (b)(5) of this section may be revised by the Regional Administrator in a manner consistent with the Administrative Procedure Act.

(6) *At-sea/electronic monitoring operational standards.* In addition to the independent third-party monitoring provider standards specified in paragraph (b)(4) of this section, any at-sea/electronic monitoring program developed as part of a sector's yearly operations plan pursuant to paragraph (b)(1)(v)(B)(2) of this section must meet the following operational standards to be approved by NMFS:

(i) *Gear.* Each at-sea monitor must be provided with all of the equipment specified by the Northeast Fisheries At-sea Monitoring Program. A list of such equipment is available from the Northeast Fisheries Science Center

upon request. At-sea/electronic monitoring service providers are responsible for the cost of providing such gear to at-sea monitors to the extent not funded by NMFS. This gear shall be inspected by NMFS upon the completion of training required pursuant to paragraph (b)(4)(i)(I) of this section.

(ii) *Vessel selection protocol.* An at-sea/electronic monitoring program service provider must develop a formal vessel-selection protocol to deploy at-sea monitors and electronic monitoring equipment in a statistically random manner consistent with the coverage levels required pursuant to paragraph (b)(1)(v)(B)(3) of this section. This protocol must include a method to allow for waivers in specific circumstances, including how waivers would be requested, assessed, and recorded.

(iii) *Reporting/recordkeeping requirements—(A) Vessel requirements.* In addition to all other reporting/recordkeeping requirements specified in this part, to facilitate the deployment of at-sea monitors and electronic monitoring equipment pursuant to paragraph (b)(1)(v)(B)(2) of this section, the operator of a vessel fishing on a sector trip must provide at-sea/electronic monitoring service providers with at least the following information: The vessel name, permit number, trip ID number in the form of the VTR serial number of the first VTR page for that trip or another trip identifier specified by NMFS, and an estimate of the date/time of departure in advance of each trip. The timing of such notice shall be sufficient to allow ample time for the service provider to determine whether an at-sea monitor or electronic monitoring equipment will be deployed on each trip and allow the at-sea monitor or electronic monitoring equipment to prepare for the trip and get to port, or to be installed on the vessel, respectively. The details of the timing, method (e.g., phone, email, etc.), and information needed for such pre-trip notifications shall be included as part of a sector's yearly operations plan. If a vessel has been informed by a service provider that an at-sea monitor or electronic monitoring equipment has been assigned to a particular trip pursuant to paragraph (b)(6)(iii)(B)(I) of this section, the vessel may not leave

port to begin that trip until the at-sea monitor has arrived and boarded the vessel, or the electronic monitoring equipment has been properly installed.

(B) *At-sea/electronic monitoring service provider requirements—(1) Confirmation of pre-trip notification.* Upon receipt of a pre-trip notification pursuant to paragraph (b)(6)(iii)(A) of this section, the service provider shall inform the vessel operator whether the vessel will be monitored by an at-sea observer or electronic monitoring equipment for that trip, or will be issued an at-sea/electronic monitoring waiver for that trip based upon the vessel selection protocol specified in paragraph (b)(6)(ii) of this section.

(2) *At-sea/electronic monitoring report.* A report detailing area fished and the amount of each species kept and discarded shall be submitted electronically in a standard acceptable form to the appropriate sector and NMFS within 48 hr of the completion of the trip, as instructed by the Regional Administrator. The data elements to be collected and the format for submission shall be specified by NMFS and distributed to all approved at-sea/electronic monitoring service providers and sectors. At-sea/electronic monitoring data shall not be accepted until such data pass automated NMFS data quality checks.

(iv) *Safety hazards—(A) Vessel requirements.* The operator of a sector vessel must detail and identify any safety hazards to any at-sea monitor assigned pursuant to paragraph (b)(6)(iii)(B)(I) of this section prior to leaving port. A vessel cannot begin a trip if it has failed a review of safety issues pursuant to paragraph (b)(6)(iv)(B) of this section, until the identified safety deficiency has been resolved pursuant to § 600.746(i).

(B) *At-sea/electronic monitoring service provider requirements.* An at-sea monitor must complete a pre-trip safety checklist provided by NMFS before an at-sea monitor can leave port onboard a vessel on a sector trip. If the vessel fails a review of safety issues pursuant to this paragraph (b)(6)(iv)(B), an at-sea monitor cannot be deployed on that vessel for that trip.

(v) *Adjustment to operational standards.* The at-sea/electronic monitoring

operational standards specified in paragraph (b)(6) of this section may be revised by the Regional Administrator in a manner consistent with the Administrative Procedure Act.

(c) *Approval of a sector and granting of exemptions by the Regional Administrator.* (1) Once the Regional Administrator has made a preliminary determination that the documents submitted pursuant to paragraphs (a)(1), (b)(2), and (b)(3) of this section appear to comply with the requirements of this section, NMFS may consult with the Council and approve or disapprove sector operations consistent with the Administrative Procedure Act and other applicable law.

(2) If a sector is approved, the Regional Administrator shall issue a letter of authorization to each vessel operator and/or vessel owner participating in the sector. The letter of authorization shall authorize participation in the sector operations and may exempt participating vessels from any Federal fishing regulation applicable to NE multispecies vessels, except those specified in paragraphs (c)(2)(i) and (ii) of this section, in order to allow vessels to fish in accordance with an approved operations plan, provided such exemptions are consistent with the goals and objectives of the FMP. The letter of authorization may also include requirements and conditions deemed necessary to ensure effective administration of, and compliance with, the operations plan and the sector allocation. Solicitation of public comment on, and NMFS final determination on such exemptions shall be consistent with paragraphs (c)(1) and (2) of this section.

(i) *Regulations that may not be exempted for sector participants.* The Regional Administrator may not exempt participants in a sector from the following Federal fishing regulations: NE multispecies year-round closure areas; permitting restrictions (e.g., vessel upgrades, etc.); gear restrictions designed to minimize habitat impacts (e.g., roller gear restrictions, etc.); and reporting requirements. For the purposes of this paragraph (c)(2)(i), the DAS reporting requirements specified at § 648.82; the SAP-specific reporting requirements specified at § 648.85; and the

reporting requirements associated with a dockside monitoring program specified in paragraph (b)(5)(i) of this section are not considered reporting requirements, and the Regional Administrator may exempt sector participants from these requirements as part of the approval of yearly operations plans. This list may be modified through a framework adjustment, as specified in § 648.90.

(ii) *Universal sector exemptions.* All sector vessels are exempt from the following Federal fishing regulations under this part:

(A) Trip limits on NE multispecies stocks for which a sector receives an allocation of ACE pursuant to paragraph (b)(1)(i) of this section (i.e., all stocks except Atlantic halibut, ocean pout, windowpane flounder, SNE/MA winter flounder, and Atlantic wolffish);

(B) The GOM Rolling Closure Areas and the GB Seasonal Closed Area specified in § 648.81(f)(1) and (g), respectively, provided sector vessels comply with the sector-specific GOM Rolling Closure Areas specified in § 648.81(f)(2)(vi);

(C) NE multispecies DAS restrictions other than those required to comply with effort controls in other fisheries, as specified in §§ 648.92 and 648.322; and

(D) The minimum codend mesh size restrictions for trawl gear specified in § 648.80(a)(4)(i) when using a haddock separator trawl defined in § 648.85(a)(3)(iii) or the Rulle trawl defined in § 648.85(b)(6)(iv)(J)(3) within the GB RMA, as defined in § 648.80(a)(2), provided sector vessels use a codend with 6-inch (15.2-cm) minimum mesh.

(3) The Regional Administrator may withdraw approval of a sector, after consultation with the Council, at any time, if it is determined that sector participants are not complying with the requirements of an approved operations plan or that the continuation of the operations plan will undermine achievement of fishing mortality objectives of the FMP. Withdrawal of approval of a sector may only be done in a manner consistent with the Administrative Procedure Act and other applicable law.

(d) *Approved sector allocation proposals.* Eligible NE multispecies vessels, as specified in paragraph (a)(3) of

this section, may participate in the sectors identified in paragraphs (d)(1) through (19) of this section, provided the operations plan is approved by the Regional Administrator in accordance with paragraph (c) of this section and each participating vessel and vessel operator and/or vessel owner complies with the requirements of the operations plan, the requirements and conditions specified in the letter of authorization issued pursuant to paragraph (c) of this section, and all other requirements specified in this section. All operational aspects of these sectors shall be specified pursuant to the operations plan and sector contract, as required by this section.

- (1) *GB Cod Hook Sector.*
- (2) *GB Cod Fixed Gear Sector.*
- (3) *Sustainable Harvest Sector.*
- (4) *Port Clyde Community Groundfish Sector.*
- (5) *Northeast Fishery Sector I.*
- (6) *Northeast Fishery Sector II.*
- (7) *Northeast Fishery Sector III.*
- (8) *Northeast Fishery Sector IV.*
- (9) *Northeast Fishery Sector V.*
- (10) *Northeast Fishery Sector VI.*
- (11) *Northeast Fishery Sector VII.*
- (12) *Northeast Fishery Sector VIII.*
- (13) *Northeast Fishery Sector IX.*
- (14) *Northeast Fishery Sector X.*
- (15) *Northeast Fishery Sector XI.*
- (16) *Northeast Fishery Sector XII.*
- (17) *Northeast Fishery Sector XIII.*
- (18) *Tristate Sector.*
- (19) *Northeast Coastal Communities Sector.*
- (20) *State of Maine Permit Banking Sector.*
- (21) *State of Rhode Island Permit Bank Sector.*
- (22) *State of New Hampshire Permit Bank Sector.*
- (23) *State of Massachusetts Permit Bank Sector.*
- (24) *Sustainable Harvest Sector III.*

[75 FR 18338, 18374, Apr. 9, 2010, as amended at 76 FR 23072, Apr. 25, 2011; 76 FR 42586, July 19, 2011]

§ 648.88 Multispecies open access permit restrictions.

(a) *Handgear permit.* A vessel issued a valid open access NE multispecies Handgear permit is subject to the following restrictions:

(1) The vessel may possess and land up to 75 lb (90.7 kg) of cod, and up to the landing and possession limit restrictions for other NE multispecies specified in § 648.86, provided the vessel complies with the restrictions specified in paragraph (a)(2) of this section. If either the GOM or GB cod trip limit applicable to a vessel fishing under a NE multispecies DAS permit, as specified in § 648.86(b)(1) and (2), respectively, is adjusted by NMFS, the cod trip limit specified in this paragraph (a)(1) shall be adjusted proportionally (rounded up to the nearest 25 lb (11.3 kg)). For example, if the GOM cod trip limit specified at § 648.86(b)(1) doubled, then the cod trip limit for the Handgear B category fishing in the GOM Regulated Mesh Area would also double to 150 lb (68 kg).

(2) *Restrictions:* (i) The vessel may not use or possess on board gear other than handgear while in possession of, fishing for, or landing NE multispecies, and must have at least one standard tote on board;

(ii) The vessel may not fish for, possess, or land regulated species from March 1 through March 20 of each year; and

(iii) The vessel, if fishing with tub-trawl gear, may not fish with more than a maximum of 250 hooks.

(iv) *Declaration.* To fish for GB cod south of the GOM Regulated Mesh Area, as defined at § 648.80(a)(1), a vessel owner or operator must obtain, and retain on board, a letter of authorization from the Regional Administrator declaring an intent to fish south of the GOM Regulated Mesh Area, and may not fish in any other area for a minimum of 7 consecutive days from the effective date of the letter of authorization. Such a vessel may transit the GOM Regulated Mesh Area, provided that their gear is stowed in accordance with the provisions at § 648.23(b).

(b) *Charter/party permit.* A vessel that has been issued a valid open access NE multispecies charter/party permit is subject to the additional restrictions on gear, recreational minimum fish sizes, possession limits, and prohibitions on sale specified in § 648.89, and any other applicable provisions of this part.